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THE OFFICE OF
THE TAX COMMISSION OF OHIO
COLUMBUS

POWERS AND DUTIES OF BOARDS OF EQUALIZATION AND REVISION

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PREPARED FOR THE
GUIDANCE AND INSTRUCTION
OF COUNTY AUDITORS AND BOARDS OF
EQUALIZATION AND REVISION

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OFFICE OF
The Tax Commission of Ohio

COMMISSIONERS

WM. B. POLAND, Chairman
F. E. MUNN, Vice Chairman
R. M. DITTEY

In compliance with a request from The County Auditors' Association of Ohio, submitting a number of questions relating to the powers and duties of county auditors and boards of equalization in connection with the appraisement and equalization of real property under the law governing quadrennial appraisements and requesting that answers thereto be transmitted to each county auditor, this pamphlet, covering the questions submitted by that Association, together with some others submitted by county auditors, has been prepared for the instruction and guidance of county auditors and boards of equalization and revision.

The Tax Commission of Ohio.

Boards of Equalization and Revision-- Their Powers and Duties.

Following are the questions asked of the Commission by the County Auditors' Association and others, and the answers of the Commission to the same.

QUESTION 1. Under Section 5571, General Code, what corrections of valuations in returns of assessors may be legally made by the county auditor? For example, if the return shows a tract of one hundred acres assessed at \$60.00 per acre but the total value erroneously carried out at \$5,000.00, may the auditor legally increase the value to \$6,000.00? If the total value were \$7,000.00, may he legally decrease same to \$6,000.00?

ANS. County auditors may correct clerical errors.

The authority of a county auditor to correct errors is found mainly in Sections 2588 to 2592, and 5571 to 5574 of the General Code.

Section 5571 provides that, "a county auditor, from time to time, shall correct any errors which he may discover in the name of the owner, in the valuation, description, or quantity of any tract or lot contained in the list of real property in his county."

This Section was formerly Section 2800 of the Revised Statutes, and the Supreme Court of the State in *State ex rel Poe v. Raine*, 47 O. S., 455, construing this section and the others referred to, says:

"The terms used in these sections are broad and general; no attempt is made to enumerate specifically, the powers granted; to have undertaken to do so would have been hazardous; for if taxes should be omitted, by other errors or omissions than those enumerated, it might be successfully contended that no provisions had been made for them. The object of the legislation was to provide against the escape from taxation, by error, of any property legally taxable; to accomplish this end, it wisely, and no doubt purposely adopted general and comprehensive language with which to convey the needful authority, instead of attempting to enumerate in specific terms the powers conferred. Section 2800 Revised Statutes (now Section 5571 General Code) authorizes the county auditor to correct any errors in the valuation of any tract or lot contained in the list of real property in his county."

"Errors by which property escapes its lawful share of taxation must of necessity be either fundamental, and thus beyond the power of a county auditor to correct, or clerical, merely, and therefore within that power."

"Certainly those (errors) only are to be deemed fundamental that pertain to the very foundation upon which the tax rests; this of course includes defects and imperfections in the law itself, and errors of judgment committed by public boards acting within the scope of their authority."

The Commission is of the opinion that a county auditor has not only the power to correct clerical errors, but that it is his duty to do so, a duty which he may be compelled to perform.

QUESTION 2. Under Section 5573, General Code, are the owners of property omitted from the assessor's return entitled to be notified of the value fixed by the auditor or assessor under his instruction, when restoring it to the list, as required?

ANS. The General Code makes no provision for notice in such cases nor does there appear to be any reason therefor. In making the appraisement of the property in his district the assessor is not required to give notice to the owners of real property, and the action contemplated in Section 5573 is to complete the work which the assessor failed to do in the first instance.

The Commission is of the opinion, however, that when omitted property has been placed upon the duplicate by the county auditor, a copy of the printed pamphlet provided for in Section 5446, corrected to show the addition of the omitted property, together with the assessed value as fixed in accordance with provisions of Section 5573, should be mailed to the owner thereof, together with a certified copy of the valuation as provided in Section 5555.

QUESTION 3. If real estate belonging to an incorporated company, and necessary to the daily operations of the company (see Section 5404 General Code) is not valued and returned by the assessor should the auditor under the provisions of Section 5573 G. C., restore it and have a value placed thereon as required in said section?

ANS. Yes.

The General Code provides, Section 5554, that, "the assessor, in all cases, from actual view, and from the best sources of information within his reach, shall determine, as near as practicable, the true value of *each separate tract and lot of real property in his district*."

Section 5560 that, "*each separate parcel of real property shall be valued at its true value in money, excluding the value of the crops growing thereon.*"

Section 5569 that, assessors' returns shall contain the names of the several persons, *companies*, or *corporations* in whose names the several tracts and lots of real property within his district have been listed and the value of each separate tract or lot as determined by the assessor.

Section 5570, that "each assessor shall enter in a separate list pertinent descriptions of all burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, and public buildings and property used exclusively for any public purpose, with the lot or tract of land on which such house, institution or public building is situated, and which are exempt from taxation. He shall value all such property at its true value in money in like manner as he is required to value other real property."

From the foregoing provisions it is clear that it is the duty of the assessor to value all the real property in his district and make return of the same to the county auditor, returning exempted property in a separate list. The auditor should restore omitted property of incorporated companies. See answer to question 13.

QUESTION 4. If the real estate described in the preceding question has been returned and valued by the quadrennial assessor, should such valuation be considered as a part of the "aggregate value of the real property of the county" as said expression is used in the last clause of Section 5598 General Code, wherein it is provided that the county board may not reduce such aggregate value?

ANS. For the reasons stated in reply to Question 3, the Commission is clearly of the opinion that such property constitutes a part of "the aggregate value of the real property of the county."

QUESTION 5. May the Quadrennial County Board of Equalization or Board of Review for municipalities legally increase the value of any real estate, as the same was returned by the quadrennial assessor, without notice to the owner thereof?

ANS. Yes.

The Supreme Court in State ex rel v. Morris, et al., 63 O. S., 508, construing Section 2814 Revised Statutes (now Section 5598 General Code), says: "the valuations made by district assessors, and the equalization made by county and city boards of equalization, are made without notice to the owners of real estate."

Provision is made in Sections 5599 to 5601 inclusive for hearing complaints when the boards of equalization sit as boards of revision in 1911.

While the law does not require that property owners be notified, the Commission feels that it would be unjust to them not to do so. Example: A tax-payer receiving a pamphlet issued by the quadrennial assessor, finding that his property is assessed at \$5,000, may be perfectly contented with this appraisement. If the board of equalization raises it to \$6,000 without his knowledge, he remains under the impression that the appraisement is \$5,000, and he makes no protest, only learning of the change when he pays his tax in December, 1911.

The Commission may suggest another method later, but the one which suggests itself now as an inexpensive means, would be to issue a pamphlet containing the names of the tax-payers in the city and county, whose property has been raised, with the amount added by the quadrennial county or city board of equalization, and mail copy of same to each individual whose property value has been increased.

QUESTION 6. If notice is required, when is it given, for what length of time, by whom and in what manner?

ANS. Notice is not required, but see answer to Question 5.

QUESTION 7. At what time is the Board of Review for municipalities required to begin and close its work of equalizing the values returned for quadrennial assessors?

ANS. Such boards must complete their work on or before the first Monday in October.

Section 5624 provides that "at the conclusion of the quadrennial appraisement of real property in such municipal corporation the board of review therein shall act as a board of equalization of the value of such real property."

Boards of Review for the equalization of real and personal property, moneys and credits within certain municipal corporations are appointed by the state board of appraisers and assessors (Section 5618).

The state board of appraisers and assessors may fix the time within which boards of review shall complete their work. (Section 5620.)

County boards of equalization are required to complete their work on or before the first Monday in October (Section 5594) and each county auditor is required on or before the first Monday in November (Section 106 Act of May 10, 1910) to transmit to The Tax Commission an abstract of the real property in each taxing district in his county.

While there may appear, on a casual examination of these provisions, to be a conflict between the provisions of Section 5620 and Section 5594 in this, to-wit: that it may be within the power of the board of appraisers and assessors to fix the time within which boards of review shall complete their work as boards of equalization at a time which may expire later than the first Monday in October, a more careful study will show that such is not the case.

The object of Section 5620 was to place it within the power of the board of appraisers and assessors to limit the period during which boards of review should sit, and this appears to be a very wise and proper provision. In some cities it is necessary for such boards to sit during the entire year, while in others two or three months in each year afford ample time for the boards to do all their work.

But construing all the provisions together it is evident that the General Assembly intended that the work of all boards of equalization should be completed in time for the county auditor to prepare his abstract of the real property in each taxing district in his county for transmission to the Tax Commission on or before the first Monday in November, and that when the Legislature in the Act of May 10, 1910, fixed that date it had in contemplation the completion of the work of all boards of equalization on or before the first Monday in October.

It is, however, clearly within the power of the board of appraisers and assessors to fix a time which will expire before the first Monday in October within which a board of review must complete its work as a city board of equalization.

QUESTION 8. May the Quadrennial County Board of Equalization legally change the value of all the property in a township or village by a uniform rate per cent? If so, should the lands be considered separately from the buildings? Or should the percentage be computed on the total including buildings?

Ans. Under date of June 8, 1910, the Auditor of State issued certain instructions to "quadrennial boards of equalization and review," which instructions the Commission approves and adopts as follows:

"The Quadrennial County Boards of Equalization and the Quadrennial City Boards of Review, have power and authority to increase the aggregate value of the real property of the County or City above the aggregate value thereof, as returned by the Quadrennial Assessors, with additions made thereto by the County Auditor. In making such increases, the Boards must consider each separate lot, tract or parcel of real estate, and may order

such increase on certain lots, tracts or parcels of real estate, or may order a certain per cent to be added to each lot, tract or parcel of real estate in the City or Taxing District, as in their judgment, in addition to the value returned by the assessors, will be the true value thereof."

"The County Boards of Equalization and the City Boards of Review have no power or authority to reduce the aggregate value of the real property of the County or City below the aggregate value thereof as returned by the assessors, with additions made thereto by the Auditor, but may, in the course of the equalization, shift certain values or amounts from one tract to another."

If a quadrennial board of equalization finds that all the land in a taxing district has been appraised uniformly too low by a certain average per cent, it may increase each separate tract or lot by an amount equal to such percentage.

If a board finds a similar condition exists as to the values of buildings, it may take like action. It is evident that while all the land in a taxing district might be appraised at its true value, all the buildings might be appraised below their true value, or vice versa, and it therefore follows that the boards of equalization must consider land and buildings separately, and increase or reduce the same as may be necessary to properly equalize the valuations of all the real property in the taxing district.

QUESTION 9. Is the Board of Review for municipalities authorized to sit as a Board of Revision? If so, at what time? What notice, if any, shall be given of such meeting?

ANS. Boards of Review in municipalities are required to sit as Boards of Revision in their respective cities, beginning their sessions on the first Monday in May 1911. The notices required to be given by county auditors provided for in Sections 5596 and 5600 are all the notices necessary to be given.

QUESTION 10. May the Quadrennial County Board of Equalization or Board of Review for municipalities, when sitting as Boards of Revision, legally increase or decrease the value of any real estate as fixed by the State Tax Commission?

QUESTION 11. May either of said Boards of Revision legally reduce the value of any real estate upon complaint without making a corresponding increase in other real estate? In other words, may they legally reduce or increase the aggregate value of the county or city as fixed by the State Tax Commission?

ANS. Questions 10 and 11 are answered together.

The Board of revision hears complaints and adds to, or deducts from the valuations as left after the auditor has corrected them as fixed by the Tax Commission, but in doing so it cannot reduce or increase the aggregate value of the county. If, upon complaint, the board finds that a certain tract or lot is too high, as compared with other tracts, it may reduce the value of such tract and increase correspondingly the value of another or other tracts. Before any valuation can be increased by a board of revision, in any case, reasonable notice must be given to all persons directly interested and an opportunity for a full hearing afforded. Sections 5588 and 5589 provide what such notices shall contain and how the parties shall be served.

QUESTION 12. Is it necessary, under Section 5600 General Code, that the complaint that any certain property is appraised at more than its true value also indicate what certain other property is appraised at a corresponding amount less than its true value, and vice versa?

ANS. No. The tax-payer is not equipped to, nor should he be asked to give his time, even if he were, to hunt out and designate one of his neighbors to bear the burden which is lifted from his shoulders. In the opinion of the Commission it is the duty of those paid to make the equalization, having the knowledge, and equipped with the data, to make this equalization without calling on the tax-payer to perform an unpracticable service.

QUESTION 13. Should the value of the real estate of an incorporated company, necessary to the daily operations of the company, be included in the abstract required to be made by Section 106 of the State Tax Commission Act, if such value has been returned by the quadrennial assessors? Should it be included if not so returned?

ANS. Section 106 of the Act of May 10, 1910, provides that "each county auditor shall make and transmit to the Commission an abstract of the real property of each taxing district in his county." And the value of the real property of incorporated companies necessary to the daily operations of the company should be included in such abstract, as a part of the aggregate value of the real property of the county.

If the assessor has omitted to return any such real property or value the same, the county auditor should proceed under Section 5573 to have such omitted property added to the list of real property and assessed as therein provided.

QUESTION 14. Should the Quadrennial County Board of Equalization consider and act upon individual complaints before their adjournment in October? Should the Board of Review for municipalities act on such complaints?

ANS. The General Code makes no provision for hearing complaints by boards of equalization. Complaints can only formally be heard by such boards when they sit as boards of revision in 1911.

It is proper for such boards to use every means for securing information, and they may consider information received in the form of complaints, but should be careful to let those furnishing such information understand that they are not precluded from filing complaint and having the same heard and considered by the board of revision in 1911. Otherwise the tax-payer, resting under a belief that such complaints should be filed with the board of equalization, might be done an injustice.

QUESTION 15. May a deputy county surveyor or deputy county auditor legally act for the surveyor or auditor, respectively, on the Quadrennial County Board of Equalization and Revision?

ANS. Sec. 5594 of the General Code provides "that the auditor, surveyor and commissioners of each county shall compose the county board of equalization of the real property within the county, except such property as lies within a City," and the Commission is of the opinion that a deputy surveyor or a deputy county auditor cannot act for the surveyor or auditor respectively on such board, whether acting as members of quadrennial county boards of equalization or revision.

Five specified county officers, acting ex officio, constitute the quadrennial board of equalization, and it is the officer and not the office that is constituted a member of such board. There are five members of the board, not three, each with an equal voice and vote in the transactions of the board. Any action of the board must be the action of the whole membership and cannot be the action of some of the members acting with other persons deputized by other members to act in their stead.

It is the judgment of the county auditor and the county surveyor that the tax-payers are entitled to and should have in equalizing the real property of their respective counties.

Knowing that a part of the duties of these officers would be to act as members of boards of equalization and revision, presumably, the electors selected persons for these offices whose judgment and discretion, it was believed, qualified them for the performance of such duties, and not for the reason that they might be relied upon to select competent deputies.

It is well established, as a general rule, that where the duties of a public office are of a ministerial character, they may be discharged by deputy, but where the duties are of a judicial character, that is where the officer's judgment and discretion are required to be exercised by the officer in the performance of his duties, they may not be performed by deputy, unless authorized by statute.

Section 2563 provides that, "the county auditor may appoint one or more deputies to aid him in the performance of his duties."

The language of Section 2788 providing for the appointment of deputies by county surveyors is as follows: "The county surveyor shall appoint such assistants, deputies, draughtsmen, inspectors, clerks or employes as he deems necessary for the proper performance of the duties of his office."

The statutes nowhere authorize a deputy auditor or a deputy surveyor to discharge the duties devolving upon members of county boards of equalization, and as those duties are judicial and not ministerial in any sense, they could not be discharged by deputy even if held to be part of the duties pertaining to the office of auditor or surveyor.

QUESTION 16. Can the county auditor appoint messengers and clerks for quadrennial county boards of equalization if such boards deem such messengers and clerks necessary?

QUESTION 17. Has the quadrennial county board of equalization the power to call persons before it and examine them under oath as to their own or others' property?

QUESTION 18. Are such messengers and clerks entitled to compensation?

QUESTION 19. Are persons called before the board entitled to be paid witness fees from the county treasury?

ANS. Questions 16-17-18 and 19 are answered together.

Section 5597 of the General Code provides that "all powers and duties conferred by law upon county auditors, the state auditor, county boards of equalization, boards of revision, boards of review of municipalities, election boards and state boards of equalization, relating to decennial and other equalizations of real property are hereby made applicable and extended to the equalization of quadrennial appraisements of real estate."

This section is very comprehensive and no attempt will be made to set out in detail the numerous powers and duties that it makes applicable and extends to the equalization of quadrennial appraisements. It is

sufficient to say that any power conferred or any duty imposed upon any of the officers or boards named in the section, in so far as the same may be applicable, are conferred and imposed upon and may be exercised by quadrennial boards of equalization.

By the provisions of Section 5581 the county auditor is required to appoint such messengers and clerks as the county board of equalization may deem necessary, and these messengers and clerks are entitled to receive not to exceed three dollars per day for their services, which shall be paid out of the county treasury.

Section 5584 provides that a county board of equalization may call persons before it and examine them under oath as to their own or others' property.

As such powers and duties of county boards of equalization relate to the equalization of real property they may be exercised by quadrennial county boards of equalization and the compensation of such employes and witnesses be paid in the manner similar expenses are paid by county boards.

QUESTION 20. Have boards of equalization authority to travel within the territory comprised within their jurisdiction, for the purpose of viewing property, the valuation of which is subject to equalization by them?

QUESTION 21. What, if any, authority over such boards in this matter has the Tax Commission of Ohio?

ANS. A number of county auditors having inquired about the power of county boards of equalization to visit the different townships and villages in their counties, and sought the opinion of the Commission as to the propriety of such a course, the Commission deemed the matter of sufficient importance to submit to the attorney general of Ohio for an opinion thereon, and questions 20 and 21 were accordingly submitted to that officer.

Under date of August 11, 1910, the attorney general in his opinion says, in answer to question 20: "Without quoting the statutes defining the powers and duties of the county and city boards of equalization I beg to state that I am clearly of the opinion that they have discretionary power to act as you suggest. The power to 'equalize' carries with it the power to employ any means which may be necessary to the acquisition of the information on which the equalization is based. Indeed there could be no better way of acquiring the knowledge which the members of the boards of equalization should have in order intelligently to discharge the powers and duties of their offices."

In answer to Question 21 the attorney general says: "Under this section (81 of the Act of May 10, 1910), the Tax Commission of Ohio

undoubtedly has the power to order members of all boards of equalization in the state to visit the various taxing districts within their several jurisdictions, and personally to view the property, the valuation of which is subject to equalization by them. The effect of such an order would be to foreclose the discretion otherwise existing in the boards of equalization; what had previously been a *power* would become a *duty*. Such an order of the Tax Commission could be enforced by the penalty prescribed in Section 111 of the Act of 1910."

The Commission is of the opinion that no better plan could be pursued by quadrennial county boards of equalization.

In arranging to visit the taxing districts of the county a schedule should be prepared, fixing a time and place for a meeting to be held in each district, notice of which should be given through publication in the newspapers or in such other manner as in the judgment of the board will best bring it to the attention of the taxpayers.

At such meetings every taxpayer should be given a fair opportunity to be heard upon the valuations in his district as made by the quadrennial assessor, and the board should conduct such inspections and investigations as may be thought necessary to inform its members of the general situation, quality of soil, improvements and natural and artificial advantages possessed by the real property in the district, and such other information, relating to the values thereof, as the board may desire.

The board will thus be able, when it comes to consider and compare the various taxing districts with each other, intelligently to perform its work of equalizing all the real property of the county.

The Commission therefore earnestly recommends that each quadrennial county board of equalization adopt some such plan as that herein outlined, and that it visit each taxing district in its county before it completes the work of equalizing for the entire county.

QUESTION 22. If the quadrennial assessor of real property has not valued and listed separately the right to the minerals in any tract, parcel or lot of land, where the fee of the soil is in one person and the right to the minerals therein in another, should the county auditor proceed under Section 5573 of the General Code to add such mineral rights to the list of real property and have the same valued as other omitted property, and should such valuation be considered as a part of the "aggregate value of the real property of the county?"

Ans. The value of the minerals therein necessarily constitute a part of the value of real property and it is the duty of officers to consider the same in determining the value of any tract, parcel or lot of land.

If the ownership of the fee of the soil and the right to the minerals therein is in one person the value fixed by the assessor should be the true value in money of the entire property, both the soil and the minerals, but where the ownership is in different persons, the soil and the mineral rights must be listed and valued separately. It is, therefore, the duty of the county auditor, where the assessor has failed to list and value any mineral rights held by persons other than the owners of the fee of the soil, to add the same as omitted property in the name of the person, natural or artificial, owning such mineral rights. The value of the mineral rights, whether returned by the assessor or added by the county auditor, and whether the soil and the minerals are both owned by one person or owned separately, constitutes a part of "the aggregate value of the real property of the county."

It is also the duty of quadrennial boards of equalization to take into consideration the value of minerals, such as petroleum oil, natural gas, coal, ore, limestone, fire clay, etc., in fixing the valuations of real property. See Sections 5560, 5562, 5563, General Code, for law relating to mineral rights.

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